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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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General Counsel

A decision is requested regarding a procedure incorporated in Department of Defense Directive 7410.4, Regulations Governing Industrial Fund Operations, dated March 13, 1967, which generally requires that proceeds from the sale of scrap be deposited to the industrial fund. In addition to the question of legality, the effect of the DOD procedure would be to increase an industrial fund corpus without going through the appropriation process, particularly in any case where a substantial amount of scrap is generated under a project and sold. Since this directive has been submitted to the GAO by the DOD for approval under Section 112(b) of the Budget and Accounting Procedures Act of 1950, an approval by us of this directive would be an acceptance of this procedure.

A decision is requested as to whether net proceeds from the sale of scrap should properly be credited to the industrial fund for disposition at the Fund's discretion, to a miscellaneous receipts account of the Treasury, or to the O&M or Procurement appropriation of the customer from whose materiel the scrap was generated, where such credits can be identified. (The procurement appropriation would be involved where the industrial activity performed modifications, rather than repairs. See paragraph VI.C., DOD Instruction 7040.5, September 1, 1966).

Paragraph VII.F. of DOD Directive 7410.4 requires that:

"Proceeds from sale of scrap shall be deposited to the industrial fund when such property is held in the fund *** and shall not be deposited in the Treasury as miscellaneous receipts."

In 31 U.S.C. 487, "Proceeds of sales of materials," it provides that:

"All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except *** as provided in Section 485 of Title 40, or in other law, shall be deposited and covered into the Treasury as miscellaneous receipts."

The exception cited, 40 U.S.C. 485, "Proceeds from transfer, sale, etc., of property," states in part (c) "Credit to reimbursable fund or appropriation on certain transactions," that:

"Where the property transferred or disposed of was acquired by the use of funds either not appropriated from the general fund or the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue or receipts, then the net proceeds of the disposition or transfer shall be credited to the reimbursable fund or appropriation *** provided that the proceeds shall be credited to miscellaneous receipts in any case when the agency which determined the property to be excess shall deem it uneconomical or impractical to ascertain the amount of net proceeds.***."

The question is posed as to whether an industrial fund, for which the Corpus is appropriated purely as a revolving fund, qualifies for application of this exception as a "reimbursable fund or appropriation" or whether this language implies that the credit should go to the O&M or Procurement appropriation of the customer under whose project order the scrap was generated.

In 1952 and 1953 the General Counsel rendered decisions on three separate issues relating to the disposition of receipts to an industrial fund. B-113212-O.M., dealing with Terminal Leave Compensation, held that

11-23-53 *Moore* "*** refunds of lump-sum leave payments of employees hired by the Rocky Mountain Arsenal are now properly for deposit to the credit of its working-capital (industrial) fund."

1-16-53 *Moore* B-113213-O.M., "Government Property-Lost-Disposition of Payments For," held that:

"*** payments received from Government employees for Government property lost by them are for depositing into the Treasury as miscellaneous receipts."

1-16-53 *Moore* B-113214-O.M., dealing with Jury Service Fees, held that:

"*** no legal basis for crediting such fees to the working-capital (industrial) fund is perceived."

Thus in two of the three cases it was decided that the industrial fund would not retain the proceeds.

In addition to this basic question as to proper disposition of proceeds from the sale of industrial fund scrap, an opinion is also requested as to the effect which the relative magnitude of occurrence would have on the basic decision. The effect of retention of large sums of proceeds from scrap sales within the industrial fund could increase the Corpus of the industrial fund and dependent upon the manner in which the proceeds are handled, and the uses to which applied, might also contradict the basic nature of an industrial fund as a non-profit (break-even) operation.

DD GAO Report B-140389, of March 18, 1966, on "Cost of Sales of Surplus Property and Disposition of Proceeds," illustrates the significance which scrap processing and sales can assume. On page 18 of the report, it is noted that the industrial fund at the Norfolk Naval Shipyard, during fiscal year 1965, received 19.8 million pounds of scrap material (3.1 million of which it owned) for processing during the year, and was reimbursed for the processing costs alone in the amount of \$325,400, from proceeds of surplus sales deposited in the DSA Deposit Fund Account.

In another case, some years ago, the Navy's Fleet Rehabilitation and Modernization (FRAM) program involved removal of extensive portions of ships' superstructures. A large amount of scrap metal was thus generated. These cases indicate that, at times, substantial amounts of scrap and revenues can be involved.

for Donald L. Eirich
Daniel Borth
Associate Director

OCT 2 - 1967

Director, Defense Division

Returned. As noted in your submission 31 U.S.C. 487 requires all proceeds of sales of old material, condemned stores, supplies, or other public property of any kind to be deposited into the Treasury as miscellaneous receipts, with certain exceptions including that provided in 40 U.S.C. 485. The exception in 40 U.S.C. 485 as quoted in your submission is applicable to working-capital funds as initially authorized by section 405 of the National Security Act of 1947, as amended by section 11 of the National Security Act Amendments of 1949, 63 Stat. 578, 587, and as now authorized by the provisions of law codified in 10 U.S.C. 2208. It having been held in 35 Comp. Gen. 207, 209, that "There can be no question but that these working capital funds are 'by law reimbursable from assessment, tax, or other revenue or receipts' within the meaning of that phrase as used" in 40 U.S.C. 485. In view thereof, the procedures set forth in EOB Directive 7410.4 which provide that proceeds from the sale of surplus and excess property and from salvage and scrap shall be deposited to the industrial fund when such property is held in the industrial fund, are legally proper. The subject procedures do not represent a change over those heretofore in effect.

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The relative magnitude of occurrence does not effect the above decision and, in this connection, reports on the condition and operations of working-capital funds are required to be made annually by the Secretary of Defense to the President and Congress as provided by 10 U.S.C. 2208(1). The effect of retention of large sums of proceeds from scrap sales would no doubt be reflected in such reports.

FRANK H. WEITZEL

Comptroller General
 of the United States

Attachments

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